

I.R. NO. 98-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAWTHORNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-82

HAWTHORNE EDUCATIONAL SECRETARIES
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief. The Hawthorne Educational Secretaries Association sought an order compelling the Board to pay increments pursuant to the recently expired collective negotiations agreement between the parties. That agreement provides "individual secretaries are not entitled to an automatic salary increment." Accordingly, since there was not an automatic incremental structure in the contract, increments were not part of the status quo.

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Appearances:

For the Respondent,
Fogarty & Hara, attorneys
(Ellen Marie Walsh, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Louis P. Bucceri, of counsel)

INTERLOCUTORY DECISION

On September 3, 1997, the Hawthorne Educational Secretaries Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Hawthorne Board of Education engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} when at the expiration of the most

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

recently expired collective negotiations agreement between the Association and the Board, the Board refused to pay increments as provided under the expired contract.

The unfair practice charge was accompanied by an application for interim relief. An order to show cause was executed and the matter was heard in a telephone hearing on October 21, 1997.

The Board disputes that an automatic salary increment structure was in effect between the parties.

The recently expired agreement was a two-year agreement which expired on June 30, 1997.

Article VI of the agreement provides:

Individual secretarial personnel are not entitled to an automatic annual salary increment. Said increment shall be paid subject to the recommendation of the Superintendent of Schools and approval by the Board of Education.

The Commission has consistently found that where a contract provides for the automatic payment of increments, payment is part of the status quo which must be maintained during negotiations.

However, where an incremental structure is not automatic, the Commission will not order the payment of increments. Evesham Tp. B/E and Evesham Tp. EA, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

Here, the contract states that individual secretarial personnel are not entitled to automatic salary increments.

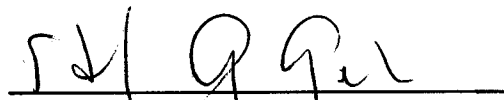
The Association argues that this language refers to the Board's right to pay increments to an individual employee. It does not give the Board the right to refuse the payment of increments

across the board. The Board has never refused to pay increments pursuant to this provision. The Board conceded it has been the Board's practice to pay increments in spite of this provision. However, where there is clear and unambiguous contract language, the contract takes precedent over a contrary past practice. New Brunswick Bd. of Ed., P.E.R.C. No. 78-56, 4 NJPER 156 (14073 1978), aff'd App. Div. Docket No. A-2450-77 (4/2/79).

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Here, I do not believe that the Association has met its heavy burden. I cannot say that the Association has a substantial likelihood of success in prevailing before the Commission in demonstrating an automatic incremental structure exists in light of Article VI.

The application for interim relief is denied.


Edmund G. Gerber
Commission Designee

DATED: October 21, 1997
Trenton, New Jersey